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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91161817
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Attachments	Applicant's Motion for Summary Judgment Exhibit 2 Part 2 of 2 (1c of 4).pdf (65 pages)

1 Q And what was his purpose, if you know, in asking
2 for this information?

3 A He had received requests for this particular
4 information and delegated that responsibility to me.

5 Q From whom did you receive the request?

6 A I do not know.

7 Q Do you have an understanding as to why this
8 information was being collected in March of 2005?

9 A It was my understanding as per a discussion with
10 my manager that this was a request for information for a
11 trademark -- for the 911 Hz Tone.

12 Q For a new trademark application?

13 A I do not know. It was just in reference to a
14 trademark of the 911 Hz Tone.

15 Q Were you aware in March of 2005 that Motorola had
16 filed an application for registration of the 911 Hz Tone as
17 a trademark?

18 A No, I was not aware.

19 Q Now, if you turn to the third page of this
20 document, you see it's headed, "Pre-1991 Radios"?

21 A Correct.

22 Q And then the next page is headed, "Post-1991
23 Direct Radios", do you see that?

24 A Correct.

25 Q What was the reason for distinguishing based on

1 the 1991 date?

2 A The request that I received, to the best of my
3 knowledge -- the best of my recollection is that my manager
4 requested that I find -- identify radios 1991 and later that
5 utilized the 911 Hz Talk-Permit tone, Call-Back tone, versus
6 -- he put that request out for clarity. For clarity, he
7 mentioned that there were pre-1991 products available also,
8 and he said give me a complete list.

9 So I myself identified pre and post based upon
10 the initial request.

11 Q Did you ask him why he had specified 1991 as a
12 demarcation?

13 A Honestly, I did not.

14 Q Do you have an understanding as to why he did?

15 A At the time of the request, I did not.

16 Q Do you now?

17 MR. WILLIAMS: Objection to the extent that your
18 answer would call for privileged communications between
19 yourself and the lawyers.

20 BY MR. STEWART:

21 Q Can you answer the question?

22 MR. WILLIAMS: If it involves discussion with the
23 lawyers, I'm going to ask you to not answer the question.

24 A The only assumption I can make is because the
25 dates showed up in the documents that you have showed me

1 already.

2 BY MR. STEWART:

3 Q What's the significance of the copyright date at
4 the bottom of the first page, it says 2003?

5 A What does not come through, unless you print in
6 color, is the design which is our internal -- I'm sorry, I
7 stand corrected.

8 The -- what does not come through also is color
9 and any formation -- artistic formations, but the copyright
10 I believe is in relationship to Motorola and any -- this is
11 from a template that's used that can carry the Motorola
12 logo, and it was an older template that I had been using.

13 Q I see. Now, if you turn to the second page of
14 Exhibit 6 --

15 A Okay.

16 Q Labeled 002265 -- do you see that?

17 A Yes, I do.

18 Q The second bulleted paragraph labeled
19 "Consumer/cellular Support", do you see that?

20 A Yes, I do.

21 Q What is the significance -- or what's the meaning
22 of that section of this page?

23 A This section was to define the development team
24 that moved from our radio based group to support for our --
25 was at that point referred to Gemini and later to Mirs,

1 M-i-r-s, and then to iDEN. They carry forward a similar
2 need to have a Talk-Permit tone.

3 Q So Mirs and Gemini were the names of teams
4 internal to GEMS?

5 A Yes, they were -- they were nomenclature for just
6 identification of a development team.

7 Q And was iDEN also a -- within GEMS?

8 A At that point, when they became iDEN, they were
9 moved out of the GEMS organization.

10 Q And what time period was that?

11 A To the best of my recollection, and my personal
12 knowledge, I believe the timeframe was around mid 1995.

13 Q And what -- into what division of the company
14 were they moved?

15 A I believe -- I believe the organization is called
16 Networks.

17 Q You had previously identified GEMS mobile
18 devices, connected home --

19 A I was missing the fourth. The fourth is
20 networks.

21 Q Okay, I've got you. And what does it mean --
22 "The iDEN team altered the period"?

23 A They altered the tone, tone being a mix of the
24 actual pitch, the frequency of the tone and also the -- the
25 duration and items that make up the actual sounds.

1 Q And who on iDEN team did that?

2 A I do not know a specific name.

3 Q Who were on the iDEN team? I'm sorry, these are
4 people -- this was a team that moved out of the organization
5 you were joining in 95, is that right?

6 A I joined in 1995. These people had already
7 separated from the development team I was involved with at
8 the period of 1995.

9 Q So how did you come by this information that they
10 altered the period?

11 A I spoke to Marlon Moo-Young who, it is my
12 assumption, had working knowledge of these facts as he was
13 in the Gemini/Mirs/iDEN team at one point.

14 Q And the first product -- I'm sorry, in
15 parenthesis in that first subsection, under the second
16 bullet, it says, parens, "Timeframe for the actual tone",
17 close parens. What did you mean by that?

18 A There was a modification of the frequency, there
19 was a modification of the duration, there was a modification
20 of the cadence of the tone.

21 So there was multiple aspects of the sounds that
22 changed, that made it unique to the 911 Hz Tone.

23 Q Were there technical reasons for altering those
24 aspects of the tone?

25 A I am not aware or I have not discovered any

1 evidence to say one way or the other.

2 Q Do you know whether the network protocols are
3 different between iDEN and the trunk two-way radio protocols
4 used by Motorola?

5 A The network protocols are different between the
6 two, but the products in that timeframe did not require the
7 protocol timings to generate tones.

8 Q We have moved beyond what you described with
9 respect to the MTX 300T, is that right?

10 A Correct.

11 Q Now, the second -- the last line on this page
12 says, "The first product to support this was released in
13 1991". Do you see that?

14 A Yes I do.

15 Q What does that mean?

16 A The first -- in conversations with Marlon
17 Moo-Young, it's my understanding that the first products
18 that actually exhibited this modified tone or sounds was
19 available for at least listening, beta testing or some type
20 of function where the tone could be exhibited in 1991.

21 Q Do you know which of those was available in beta
22 testing?

23 A I do not know at this point. I do not know if
24 based upon conversations what -- what aspects.

25 Q And is it your understanding that that 1991

1 availability of the tone was an availability of the non 911
2 Hz Tone, or an availability of the 911 Hz Tone in iDEN
3 related products?

4 A No, the availability -- the product to support
5 this was released in 1991. That availability was based upon
6 the altered modified version of the sounds.

7 Q Now, were you asked to investigate tones used
8 with respect to iDEN products?

9 MR. WILLIAMS: Objection to the extent that the
10 question calls for communications between yourself and the
11 lawyers.

12 A No, I -- my manager did not request for me to
13 focus on those. He requested the products that I had
14 working knowledge or the ability to have working knowledge
15 of.

16 Q So did this second bulleted item on page two not
17 result from your manager's direct request?

18 A Correct.

19 Q You mentioned before that there were variants of
20 this document, is that correct?

21 A I do not know if it was placed into a larger
22 document or not with my reference to variants of this
23 document.

24 Q Who would have placed it in a larger document?

25 A I did not know if, say, this one that has a very

1 similar formatting was a page of this document or not. I'm
2 only aware of the information that I provided and supplied
3 to my manager.

4 Q And is Exhibit 6 exactly the form in which you
5 provided the information?

6 A From what I can see, to my best understanding, it
7 does appear to be the form which I delivered it.

8 Q Well, why would you have suggested that there
9 would be -- that there may be a larger document of which
10 this form is a part?

11 MR. WILLIAMS: Objection, that mischaracterizes his
12 testimony. He did not say that.

13 A To be clear, I did not know if I was turning over
14 information to be compiled into a larger document.

15 BY MR. STEWART:

16 Q Did your manager tell you anything that indicated
17 that that might be the case?

18 A No.

19 Q Did you ever see another document that included
20 this information?

21 A No.

22 Q To whom was this document distributed?

23 MR. WILLIAMS: Objection, vague.

24 BY MR. STEWART:

25 Q This document, referring to Klein Exhibit 6.

1 A I do not know. I gave this -- submitted this to
2 my manager.

3 Q Did you submit it to anyone else?

4 A No, I did not.

5 Q Did you ever have a discussion of the information
6 included in this Exhibit 6?

7 MR. WILLIAMS: Objection to the extent your answer
8 will call for a disclosure of communications between
9 yourself and the lawyers.

10 A The discussion I had with this information was
11 pertinent to understanding what products were producing the
12 911 Hz Tone for verification.

13 BY MR. STEWART:

14 Q So did you have discussion about this information
15 with people other than your manager?

16 A I had discussions with Marlon Moo-Young and Mitch
17 Leshim about the contents in this document.

18 Q Did you show them this information after you had
19 compiled it in March of 2005?

20 A Not that I'm aware of.

21 Q So you talked -- you said before that you had
22 talked with those two individuals within the last two or
23 three weeks, is that right?

24 A Yes.

25 Q Did you also talk with them prior to March 2005

1 in compiling the information that's in Exhibit 6?

2 A The information that's in Exhibit 6, I talked
3 with Marlon Moo-Young. I believe I had a conversation with
4 Mitch Leshim. I do not know if specific information came
5 from Mitch or from Marlon.

6 Q At that time, in March of 2005 and before, who
7 else did you talk with about 911 Hz Tone products?

8 MR. WILLIAMS: Objection. I instruct you not to
9 answer if your answer were to involve discussions with
10 lawyers.

11 A Can you clarify.

12 BY MR. STEWART:

13 Q Yes, let me rephrase that.

14 In responding to your manager's request for you
15 to compile information about 911 Hz Tone products, in March
16 of -- in March or prior to March of 2005, did you speak with
17 individuals other than Marlon Moo-Young and Mitch Leshim?

18 A The only other person I would have spoken to, and
19 I believe he was available at the time I would speak with
20 Marlon, was his manager, Tim Quirey.

21 Q Tim Quirey. Did you collect any documentation at
22 that time in support of the information you've compiled in
23 Exhibit 6?

24 A None that I'm aware of. This collection of
25 information was taken from lists of products that we had

1 developed over the years.

2 Q And looking now at Exhibit 7, do you see that
3 it has a similar graphic format and title to parts of
4 Exhibit 6?

5 A I do.

6 Q What do you make of that?

7 MR. WILLIAMS: Objection, vague.

8 A We have standard templates within the corporation
9 so we have the same look and feel across documents.

10 MR. STEWART:

11 Q Okay. Tell me what classes of customers are
12 there for the 911 Hz Tone products?

13 MR. WILLIAMS: Objection, that's vague.

14 A Can you clarify? What do you mean "classes of
15 customers".

16 BY MR. STEWART:

17 Q Has Motorola identified any classes of potential
18 customers for purchases of 911 tone products?

19 A Have we identified if Motorola -- specifically
20 the GEMS organization -- sells to customers who require
21 private system communications systems, so that they can have
22 control of their communication methods?

23 Q Yeah, okay. What kinds of customers buy 911 Hz
24 Tone products?

25 A The types of customers are normally, but not

1 specifically, in the public safety arena, purchasing agents
2 and groups like that, the customer who interacts with the
3 sales force.

4 There is fire departments and other parts of the
5 public safety grouping. There are enterprise organizations
6 that require a dedicated communication system, critical
7 infrastructure, which would be typified by utilities and
8 other organizations like that.

9 And that is a fairly broad estimate of the types
10 of customers that the direct sales force interacts with.

11 And we then also work with ^{lessors} ~~leasers~~ of systems
12 where they purchase infrastructure and then lease out the
13 products to the eventual end user.

14 Q Can you give me an example of that kind of
15 customer?

16 A Off the top of my head, it could be a
17 communication company. I don't want to give specific names
18 because I don't know if they are specifically in this
19 configuration, where they would -- they will have a
20 communication system set up over a city, and they would
21 lease out or sell radios to, say, construction companies,
22 where the construction company is not required to install
23 their own communications, but this allows communication at
24 multiple sites.

25 Q Has this -- those are three different kinds --

1 public safety, enterprise organizations and lessors of
2 systems.

3 Are there more kinds of customers who buy these
4 products?

5 A There are -- I mean, that is our majority
6 numbers. I mean, there are groups, you know -- news groups
7 purchase these radios sometimes such that they can get them
8 programmed up to be able to listen to police activity for
9 information, and things like that.

10 There are people who work at oil refineries.
11 There is -- these particular products I've listed --
12 customers I've listed are focused on, the voice-based
13 products that integrate with the system and the
14 infrastructure.

15 Q And have these kinds of customers -- let me start
16 over again.

17 Back in 1991, were there different kinds of
18 customers who bought 911 Hz products?

19 A Not that I'm aware of.

20 Q Okay. What are Motorola's principal competitors
21 for products like the 911 Hz Tone products?

22 A Specific to -- specific to the competition in
23 using the 911 Hz, or, you know, the 911 Hz would indicate
24 that you are referring to system or trunking based products.
25 Am I understanding -- am I understanding the question?

1 Q I think we talked earlier this morning about the
2 911 Hz products being trunking-based voice services for
3 which that particular type of availability, channel
4 availability message was appropriate, and I guess rather
5 than my saying that, I will take your limitation. That's
6 right. We are talking about trunked voice systems.

7 A Okay. Of competitors that operate on a trunked
8 voice system, there is E. F. Johnson, there is Macom, there
9 is Kenwood, there is Icom, there is Vertex; there is
10 probably going to be more competitors in the future, and
11 there is probably competitors in the past.

12 But of the ones that are primary competitors, I
13 believe it's those five.

14 Q And does each of those five sub products that
15 include a -- a Talk-Permit tone or a Call-Back tone?

16 A It would be my assumption that those products
17 would require some type of indication to notify the user
18 that take either the channel is available or that the ^{microphone} ~~mike~~
19 is active.

20 Q I think we talked before, but let's confirm it
21 here. Have you done any investigation to determine whether
22 any of the products of any of those five companies produce
23 a 911 Hz Tone?

24 A Currently we are investigating the audio and
25 other aspects of those devices. Due to the nature and

1 requirements of how you have to configure the products, we
2 are working through some details.

3 Right now we do not have elements that are
4 working, say, from Macom or Kenwood, or of these other
5 competitors that we do have.

6 Q I'm sorry, I don't understand your answer.

7 A The radio needs to be operating on a system such
8 that you have an opportunity to be in a situation where the
9 radio would generate that tone.

10 And currently we are working through some issues
11 to actually get the radio we do have up on a system so we
12 can validate the performance.

13 Q Okay. So you do have two-way radio devices from
14 those five manufacturers?

15 A We do.

16 Q And you are unable to perceive tones generated by
17 those products?

18 A Currently we are now focusing on that aspect.

19 Q And what is the purpose of your investigation of
20 those devices?

21 MR. WILLIAMS: Objection to the extent your answer
22 will require you to divulge communications between you and
23 your lawyers.

24 A We have spent time identifying the robustness of
25 the physical products. We are now evaluating the

1 performance of these products, and these would include any
2 tones it generates, response on a system, and overall radio
3 performance.

4 Q And that is yet to be accomplished as you have
5 said, correct?

6 A Correct.

7 Q And to your knowledge, has Motorola engaged in
8 any -- in an investigation of those performance
9 characteristics of competitors' two-way radios before now?

10 A It is an ongoing -- it is an ongoing process. We
11 have had previous products that we focus on the durability.

12 We are now trying to establish operational
13 performances. But we also have -- when working on user
14 systems that have a mix of products, we are -- they are
15 evaluating their performance.

16 Q Do these products have an array of features or
17 functionalities that would require them to have multiple
18 different tones as the 911 Hz Tone products we looked at
19 earlier today?

20 A It would be my assumption, and I would consider
21 this a reasonable assumption that it would generate
22 different tones.

23 We have certainly heard different tones not in a
24 trunked operation, but different tones come from the device.
25 So I think it would be a fine assumption to say that it

1 would produce multiple tones while operating in that mode.

2 Q How have you heard different tones coming from
3 the device?

4 A Powering the device on, entering menus,
5 interaction with the devices.

6 Q And how did you acquire those devices?

7 A Through purchase.

8 Q Is it possible then to purchase a device, one of
9 these two-way radio devices, without having them
10 operational?

11 A Can you clarify.

12 Q Well, you said that you are not able to make them
13 make the -- the call-back tone at this point, is that right?

14 A You can purchase a product that is not configured
15 to operate on a system such that you could observe its
16 performance on a trunk system.

17 They would still operate. You could make it
18 operate without any type of restriction in a unit-to-unit
19 perspective, but operation on a trunked system does require
20 security methods that are applied for configuration for a
21 particular system. That's done on the user's behalf for
22 security.

23 Q Okay. And the Talk-Permit tone and the Call-Back
24 tone are only accessible in a trunked operation mode, is
25 that right?

1 A It is -- the tone is generated once the radio is
2 configured for transmission on a trunk system.

3 Q Does it have to be -- I want to talk to you about
4 that next. In fact, you mentioned before that at trade
5 shows and in sales rep visits to client facilities, you
6 arrange to have the devices operational so they can be
7 demonstrated, is that right?

8 A That is true.

9 Q Okay. Exactly how does that work? Let's look at
10 trade shows first.

11 A That's the easiest configuration. We bring our
12 own system such that they are configured to operate, and
13 they are on display in the trade show, on the floor, for
14 customers such that, you know, they can wander around and
15 use the products, interact with it.

16 They hear the tone as they were transmitting back
17 and forth between -- between different people utilizing the
18 radios.

19 Q And just so I'm clear, in a trunked operation,
20 there is a base station that is -- that operates wirelessly,
21 is that correct?

22 A There is a -- there is a base station that is
23 communicating over the air to the radios.

24 Q Right. And without that base station in place,
25 these radios -- we talked before about the fact that they

1 are capable on a unit-to-unit basis. They would be able to
2 communicate with each other, correct -- just by turning them
3 on?

4 A By turning a radio on, if it is configured, you
5 can communicate with another radio directly if it's
6 configured.

7 Q I see. And are the 911 Hz Tone products sold by
8 Motorola configured for either mode of operation, or does it
9 depend on the customer's requirements?

10 A Depending upon how the product is configured, it
11 can do either unit-to-unit, or unit-to-unit and
12 infrastructure-based communications.

13 Q Now, what is the difference from the -- what is
14 the difference in communications capability as between the
15 trunked operation and the unit-to-unit operation?

16 A And this is -- I'm going to ask for clarity
17 because there could be several aspects here.

18 So can you give me a little clarity here?

19 Q Is group call possible in a unit-to-unit
20 configuration?

21 A If I'm configured in a unit-to-unit mode, if I
22 press the Push-to-Talk button, the microphone becomes
23 active. I will communicate to multiple units who are
24 configured to receive my transmission.

25 Q Okay. So when you go to a trade show, you set up

1 a base station and configure the handsets to operate via
2 trunked operation, is that right?

3 A Correct.

4 Q And then what happens? A potential customer
5 comes to the booth. What happens?

6 A A customer can come to the booth and have a
7 conversation with either the staff that's first on the
8 products, or with their -- a direct sales member, and they
9 would converse, they would be able to use the products,
10 interact.

11 At that point, the tone is audible when
12 transmission is occurring through the base station. The
13 unit is generating the tone, and it's showing the forms and
14 functions of the products.

15 Q And do sales people for Motorola demonstrate the
16 functions of the handsets?

17 A It depends upon the situation. They could.
18 There could be a -- it's normally a Motorola employee who is
19 there, you know, going through the process.

20 Whether it is the direct sales force person,
21 whether it is a business member who is at the booth, or
22 whether it is a booth staff, it's just showing the operation
23 availability of the features.

24 Q Does this kind of a trunk operation require an
25 FCC license?

1 A Yes, it does, for these particular products.

2 Q And does Motorola have that license? Is that how
3 it demonstrates these capabilities at trade shows?

4 A I go under the assumption. I do not know for
5 sure. I would assume, but that's not -- I'm not part of
6 that effort.

7 Q Or a customer could have a license, is that
8 right?

9 A Correct, correct.

10 Q So if a customer doesn't -- well, looking back at
11 your competitors' products that you are looking at, what is
12 it that's preventing you from being able to observe the same
13 performance capabilities?

14 A The -- for security purposes on products,
15 customers have requested that you require a security method
16 to limit the programming of the products.

17 Currently we have -- we have a system at my
18 particular facility where I am based that we are looking to
19 place these products on that system with the frequencies
20 that we have from the FCC.

21 We are just in the middle of getting the security
22 methods such that we can program these appropriately to
23 operate on the system.

24 Q And is it the case generally that it's possible
25 to use two-way radio devices from one manufacturer on

1 another manufacturer's infrastructure?

2 A It depends upon the infrastructure that they
3 operate on. The -- we already spoke of the Astro Project 25
4 system, which is an open standard.

5 Q Yes.

6 A Such that these products operate on that open
7 standard. Then there are other standards that they do not
8 operate on.

9 Q And do any of your customers have handsets from
10 competing manufacturers that they use on the same system
11 with which -- on which they use Motorola 911 Hz Tone
12 products?

13 A Again, it depends upon the type of system they
14 operate on.

15 Q But the answer is yes, some of them do?

16 A For an Astro 25 -- or the APCO Project 25 system,
17 they can have multiple vendors on it.

18 On previous systems, it was Motorola products
19 only, and we have -- we have an agreement with E. F. Johnson
20 such that they can produce products that work on that system
21 also.

22 Q Have you seen that agreement?

23 A No, I have not.

24 Q How long has it been in place?

25 A I do not know.

1 MR. STEWART: We would ask for that to be produced
2 to the extent it's responsive to our discovery requests,
3 which it sounds to me as though it may be.

4 MR. WILLIAMS: We will take that under advisement.

5 BY MR. STEWART:

6 Q Okay. So let me ask you the more general
7 question now that we have talked about the details.

8 What conditions and actions or any other
9 circumstances are necessary for a potential customer to be
10 able to hear the 911 Hz Tone?

11 A When you say potential customer, are you assuming
12 that they have infrastructure or a system already in place
13 or not?

14 Q Let's assume that they don't.

15 A They don't. If they came to any trade show where
16 we have a system installed for display of products for
17 operation of products, they would just have to approach the
18 booth or speak with their direct sales Motorola employee,
19 and they could have a presentation of the products.

20 Q So it's necessary to have the infrastructure in
21 place and the product configured to work with the
22 infrastructure on a trunked basis?

23 A Correct.

24 Q Okay. And once those conditions are satisfied,
25 the potential customer could hear all of the tones that are

1 emitted by this device?

2 A They would be able to hear the tones associated
3 with the -- with the operation of the radio for which it was
4 configured for. By putting it on the system does not mean
5 they hear all the tones.

6 Q Are there circumstances under which it would be
7 put on a system and they would not hear the Talk-Permit
8 tone?

9 A There is a situation in which -- for a mode
10 called surveillance where the radio is meant to be
11 completely quiet. There would be no tone that would come
12 out of the micro -- out of the external speaker, but would
13 be heard with an ear piece.

14 Q And that's true for the sender and the receiver?

15 A The tone is not -- does not transmit over the air
16 for the receiver to hear. The tone is in the product.

17 The user who is trying to transmit the tone is
18 instructional as far as you can now transmit and, again, in
19 relationship to this is a -- a Motorola product.

20 Q So what's the difference between the Talk-Permit
21 tone and the Call-Back tone?

22 A A Call-Back tone is if the channel is busy and I
23 get a tone telling me so. Then, once the channel is
24 available, you hear the Call-Back tone saying essentially
25 you can now try again.

1 When you try again, if the channel is still
2 available, you will again hear your Talk-Permit tone. The
3 radio says here is -- I'm playing you this tone to tell you
4 that the microphone is available for you, please start
5 communicating.

6 Q In this situation at a trade show, when potential
7 customers were using the phone and they could hear the
8 Talk-Permit tone, was that always in connection with the
9 actual operation of the Talk-Permit function?

10 MR. WILLIAMS: Objection, that's vague.

11 A Yes.

12 BY MR. STEWART:

13 Q Let me ask it this way: When you push the button
14 and you heard the tone, that's because the -- the channel
15 function was working, is that right? The communication
16 channel open function was working?

17 A The Talk-Permit tone from its inception has
18 always indicated that when you hear this tone, you are being
19 told that either there is a channel available for you now,
20 or that the channel has been -- you know, essentially you
21 have the channel. The microphone is active. You can now
22 speak.

23 Q And were there times -- are there times, I'm
24 sorry, when the tone is heard and that's not the case?

25 A No. The tone is specific to -- the sound is

1 specific to those events.

2 Q Was the 911 Hz Tone -- I'm sorry.

3 Let me -- in the context you've described earlier
4 in which a sales rep would go to a customer facility, how
5 then would that work? How would the tone be demonstrated in
6 that context?

7 A There is a -- several different ways that that
8 could be established. The basics do not change. The radio
9 needs to be configured to operate on the system.

10 The sales individual can either work with the
11 customer to configure the radio on sites; the customer would
12 have the pertinent security method to insure the radio got
13 configured.

14 The sales individual could work with a support --
15 a staff support company. Not all companies service their
16 own products. They will have an outside company service
17 those products.

18 They could work with that service provider to
19 configure it appropriately and, then, work with the
20 customer.

21 As long as the configuration is completed
22 properly, operation will occur.

23 Q And in that context as well, is it the case that
24 when you hear the tone, it's because the channel open
25 function is working?

1 A Again, the tone has always been in reference to
2 either the call-back availability or of the microphone
3 active and communications occurring.

4 MR. STEWART: I would like to have marked as Klein
5 Exhibit 8 an advertisement that was provided to us in
6 discovery.

7 (Klein Deposition Exhibit
8 No. 8 was marked as
9 requested.)

10 A Okay.

11 BY MR. STEWART:

12 Q Do you recognize this document?

13 A I recognize it as the Astro XTS 3000
14 specification sheet. I have seen this document before.

15 Q Where have you seen it?

16 A In my daily job functions.

17 Q Is this something you provide to potential
18 customers?

19 A If requested, yes.

20 Q What is the purpose of it?

21 A This document, to the best of my understanding
22 and my use of this document, is to identify the form
23 factors, the overall form of the products, weights,
24 durability, ruggedness, frequency, supports, and high level
25 protocol supports of products.

1 Q And the listing of features on the front page,
2 does that -- is that what you are saying?

3 A Those are very high level protocol statements.

4 Q Okay. And can you look at this and tell me
5 whether there is any mention or identification of the
6 911 Hz Tone.

7 A There is -- from my visual inspection, there is
8 no direct specification of the 911 Hz Tone beyond the
9 stipulation of the protocols that would require the tone.

10 MR. STEWART: Let me have marked as Klein Exhibit 9
11 a one-page advertisement provided to us in discovery.

12 (Klein Deposition Exhibit
13 No. 9 was marked as
14 requested.)

15 BY MR. STEWART:

16 Q Do you recognize this document?

17 A I have seen this document before in my normal job
18 functions.

19 Q What is it?

20 A It is a -- a document that's to draw additional
21 attention to the robust durability of a particular version
22 of the XTS 3000 referred to as the XTS 3000 Rugged.

23 Q And is this a print advertisement that's placed
24 in publications?

25 A I do not know if it's been placed in

1 publications. This was a document -- an informational
2 element that I have used, and I am familiar with others who
3 have used this at trade shows and also as customer
4 literature.

5 Q How do you use it at trade shows?

6 A When requests come in about the durableness of
7 the products and when they have keen interest in
8 significantly more robust products than our current lines
9 for ones that are submersible, marine patrol customers, as
10 such.

11 Q Can you tell me whether there is any mention made
12 of the 911 Hz Tone in this advertisement?

13 A No, there is not mention of any features that I
14 can tell from what I'm seeing, beyond the form factor
15 itself.

16 Q What do you mean when you say "form factor"?

17 A Large knobs set further apart, large push to talk
18 button, large uncramped keypad, large display, robustness,
19 submersibility, it's light, it's more visible.

20 Q Are you aware of any -- let's start with print
21 advertising -- used by Motorola with respect to 911 Hz
22 products that mentions the 911 Hz Tone?

23 A Print?

24 Q Yes.

25 A I'm not aware of any print advertisement that

1 explicitly states the 911 Hz Tone. Well, let me rephrase
2 that.

3 We say print, beyond -- you know, when you say
4 advertisements, this could be advertisements. Beyond the
5 manuals that it's printed in, beyond the training
6 information it's printed in, beyond those types of
7 discussion, direct discussion of the Talk-Permit tone, if
8 you are referring specifically to an ad in a magazine, I'm
9 not aware of an ad in a magazine that specifically states
10 the 911 tone.

11 Q Your reference to user manuals was to the kinds
12 of information we saw in Exhibits 3, 4 and 5, is that right?

13 MR. WILLIAMS: Let me get those for him,
14 please.

15 BY MR. STEWART:

16 Q Yes.

17 A I stipulated these manuals that reference the
18 Talk-Permit tone; also training information that references
19 the Talk-Permit tone, and other items.

20 Q I want to go one by one. The user manuals you
21 referred to are these -- are like these exhibits that we
22 reviewed previously, is that right?

23 A Yes.

24 Q And the references to the tones were the ones
25 that we looked at ourselves in looking at these user

1 manuals, is that right?

2 A The references that I had were to the
3 stipulations of the alert tone table as stipulated, six
4 through eight, and also the descriptions within the text of
5 the document that stipulates the tone itself, and the
6 expectations of the tone, and interaction with the product
7 that is producing that tone -- interaction with the products
8 to produce that tone.

9 Q Okay. Now let's turn to training materials.
10 What are you referring to there?

11 A Motorola has gone through and put efforts in the
12 past to working with customers such that they understand the
13 product and manuals such as this, such that they understand
14 the product.

15 But they have also developed training information
16 such that they will have a live trainer out with the
17 customer that goes through the operation of the products,
18 speaks about the tone, has configurations in which they can
19 hear the tone. So that's discussed.

20 Then there has been -- as technology has moved
21 forward, that training has continued and been developed more
22 so such that there are CIT, computer interactive training.

23 There is an on-line method, and that itself again
24 has interaction with describing the product, describes the
25 tone, actually plays the tone so you can audibly hear the

1 sound of the Talk-Permit tone, and then that is either
2 singular solo training of the customers themselves, end
3 users, or there are trainers that work with the customers
4 and that material such that the same -- the same
5 functionality and the training of understanding the -- these
6 tones and their meanings are accomplished.

7 So there is a -- those are the -- in my
8 understanding, and I easily could be potentially missing out
9 some opportunities, but those are my understanding of the
10 different opportunities that we deliver and speak with a
11 customer directly about the tone.

12 Q And, first, when you are talking about live
13 trainers, a live trainer would use the tone for the purpose
14 of demonstrating the operation of the channel-open feature,
15 is that right?

16 A Correct.

17 Q Or function. With respect to the computer
18 training, we were handed this morning by counsel for
19 Motorola a box of documents that we hadn't seen before, plus
20 two CD-ROM discs which appear to include a video and a
21 PowerPoint training program of some sort.

22 Do you know that document?

23 A I am -- if it is what I think it is, I -- or the
24 training information I have seen in the past, I have some
25 familiarity with it. But I'm making an assumption that's

1 the same training information that I've seen in the past.

2 MR. STEWART: We are a bit at a loss here because we
3 can't actually introduce it, because we have got our one
4 copy, and we may want to go back and maybe provide it to
5 your counsel and then stipulate that's the same thing we are
6 talking about.

7 I don't want to have any confusion about what it
8 is we are actually talking about here.

9 MR. WILLIAMS: Would you like to go off the record.

10 MR. STEWART: Yes, let's go off the record.

11 MR. WILLIAMS: Shall we take a five-minute break.

12 THE VIDEOGRAPHER: This is the Videographer. The
13 time is now 2:42 p.m. We are now off the record.

14 (Whereupon, a short recess was
15 taken.)

16 THE VIDEOGRAPHER: This is the Videographer. We are
17 back on the record. The time is 2:55 p.m.

18 MR. STEWART: I'm going to ask that these two CD's
19 of which I have only a single copy be marked as Klein
20 Exhibits 10 and 11.

21 (Klein Deposition Exhibits
22 Nos. 10 and 11 were marked as
23 requested.)

24 BY MR. STEWART:

25 Q Now, what's been marked 10 was presented to us

1 with a Bates number MOT 0302268. What we have marked as
2 Exhibit 11 has the Bates number MOT 002269.

3 We understand that 2268 has an 8-minute video.
4 2269 has that video imbedded within some kind of training --
5 interactive training module, okay.

6 And you are aware of what it is that we are
7 talking about?

8 A Given that description, I believe I am.

9 Q Okay. Now, I would like to ask you about -- what
10 I'm calling the training module on 269. You have seen that
11 yourself?

12 A Yes, I have.

13 Q And what can you tell me about it? When was it
14 produced?

15 A That particular module -- or that particular
16 version, I am -- I do not know the specific timeframe. It
17 has been in the last few years, as far as being developed
18 and deployed.

19 Q Could it have been as early as 1991?

20 A No, it could not have been.

21 Q And are you aware whether there are any other
22 training modules with respect to other 911 Hz Tone products?

23 A I'm aware that the Training Department, over the
24 last few years, have been developing training information
25 for the 911 Hz products as we have defined it.

1 Q So might there be other interactive computerized
2 modules like the one that's on 269?

3 A Yes, there may be other interactive modules as
4 such.

5 Q Who is the head of the Training Department?

6 A I would go to -- I guess -- David Klein, my name
7 sake.

8 Q Okay. All right. And he and Monica Gingells
9 were the two people in the training group that you tried to
10 contact unsuccessfully, is that right?

11 A Correct.

12 Q Do you know how this particular training module
13 was discovered and produced to us this morning?

14 A I spoke with Janice Morey.

15 Q Okay.

16 A Who is, in my understanding, an author of these
17 types of manuals.

18 Q "These types" referring to Exhibits 3, 4 and 5.

19 A Yes. In this scenario, It's my understanding
20 that the organization that produced these manuals -- where
21 the verbiage is different between the authors, the tone as
22 listed in Exhibits 3, 4 and 5 being the same.

23 She, it is my understanding, was responsible for
24 and worked with the direct development of the XTS 3000 and
25 the XTS 5000 manuals. I do not know if she was involved

1 with previous versions.

2 And one of the problems we do have with different
3 authors, different verbiage, which is one reason why the
4 training information, delivering it as such -- so they can
5 hear the tones -- whether it describes on pages -- was it
6 eight through whatever -- yeah, six through eight, these
7 characterizations; by being able to hear them, you can
8 clearly identify the distinction versus the organization of
9 the descriptions.

10 Q Okay. So Exhibit 5 is the XTS 3000. You said
11 that that was -- that Janice Morey was the author of that?

12 A She worked on this particular -- I worked with
13 Janice Morey on this particular version of this particular
14 product manual, being this covers the Astro 25 protocol. So
15 I worked with her on this particular one.

16 Q Did you work in particular on the table on pages
17 six through eight that you were just referring to?

18 A No, I did not. No, I did not. Since there are
19 no changes to our tones, there was no reason to visit this
20 -- this listing.

21 Q But there was a change in the way that they were
22 described and grouped --

23 A There has been -- because of authors, the
24 description, as minor as it is, there has been description
25 changes.

1 The tones have shown no change there; audibly the
2 same sounds. But different authors have used different ways
3 to present them.

4 Q Okay. And as you were suggesting, the training
5 module on Exhibit 11 actually produces audible tones, is
6 that right?

7 A Instead of trying to capture the words, it gives
8 you the actual tone -- the actual sounds.

9 Q How is the accuracy of the frequency cadence and
10 duration of the tone enforced?

11 A The accuracy -- per the training information.

12 Q Let's talk about the training information. How
13 do you know that the tone there is actually a 911 Hz Tone
14 just as described in this trademark application?

15 A I would have to -- I would have to assume that
16 the group that developed it did an accurate generation of
17 the tone. I have no reason to doubt that it's not accurate.

18 Q Now, who is the audience for that -- for Exhibit
19 11, the training module?

20 A The training module? The training module could
21 be exhibited to end users, literally fielded users of the
22 products. It could be presented to purchasing agents who
23 are interested in making a purchase of a product; anybody
24 who wants to see the function.

25 This could be applied to new sales members who

1 have exposure to the product, things like that.

2 Q That is, Motorola sales employees?

3 A It could be Motorola sales employees, it could be
4 our -- our ~~lessors~~ ^{lessors} products.

5 Q You mentioned purchasing agents. Are you talking
6 about the individual employees of customer organizations who
7 would be the purchasers?

8 A When we interact with large companies, there
9 would be a -- you know -- a procurement officer or
10 procurement group that the sales group would interact with
11 them and the other decision makers.

12 Some customers are wholly self-contained as far
13 as they maintain the products. Those types of organizations
14 would certainly be interested in this information.

15 Q And as far as you know, in that training module
16 that's on Exhibit 11, is there any presentation of the 911
17 -- audible presentation of the 911 Hz Tone other than in
18 demonstration of the operation of the particular function?

19 A Yes, yes, the tone is available such that in a
20 list of tones, of the list of tones that's called the core
21 -- core tones of the products, you can actually just select
22 strictly the tone and listen to it.

23 Q And when you do that, it is expressly a
24 demonstration of the tone that sounds when this particular
25 function is operational, correct?

1 A It's a table that lists the Talk-Permit tone and,
2 then, a button that you press that it plays the tone.

3 Q And it's not a series of tones that you play for
4 your amusement and edification but, instead, an illustration
5 or demonstration of what it sounds like when you push the
6 Push-to-Talk button, is that right?

7 A Correct, I mean, it is specific to -- upon
8 pressing this icon or button, you hear specifically that
9 tone.

10 Q Okay. Now, has Motorola -- we talked first about
11 the print ads that might run in magazines, and you've talked
12 -- we have talked about those previously.

13 Has Motorola advertised 911 products in other
14 media other than print media?

15 A I am unaware of -- because we go through
16 procurement officers and things like that, the advertising
17 is focused to avenues of such customers.

18 So that would include the trade shows, the
19 promotions and interactive items.

20 I am not aware of any radio or TV ad that
21 specifies a 911 Hz Tone.

22 Q So you mentioned a list of ways in which
23 customers -- potential customers might hear the 911 Hz Tone
24 before -- and I'm going to list then for you here. One was
25 training?

1 A ^{Yes}
 ~~Uh-hum.~~

2 Q One was mentioned in user guides?

3 A ^{Yes}
 ~~Uh-hum.~~

4 Q A third --

5 MR. WILLIAMS: Say "yes" or "no".

6 A Yes.

7 BY MR. STEWART:

8 Q A third was heard at trade shows?

9 A Yes.

10 Q A fourth was a sales rep who demonstrates the
11 product at the customers's facilities?

12 A Yes.

13 Q And a fifth was in effect when you use the
14 product, it's got -- it makes the tone while at the same
15 time being labeled a Motorola product?

16 A Yes, it does.

17 Q Now, are there other ways in which potential
18 customers could have heard the 911 Hz Tone?

19 A Yes.

20 Q How?

21 A If a customer is in the field with another
22 customer of -- with overlapping coverage of systems, they
23 could easily be with somebody who utilizes their Motorola
24 radio, and they could easily hear the 911 Hz tone.

25 A significant number of customers would have

1 systems such that the police would be on one system,
2 potentially the fire could be on another, and there would be
3 numerous occasions where that tone would be played to people
4 who do not actually either carry a Motorola product or
5 operate on that system.

6 Q So they would hear it as it was being operated by
7 somebody who actually had already purchased the product?

8 A Yes, or who had authority. There are times
9 where, in times of crisis and need, Motorola does supply a
10 system, and we supply branded Motorola products to help out
11 in times of need.

12 And there would be a situation where they could
13 easily hear the tone as they are operating on those
14 products.

15 Q Okay. And is that different -- I had considered
16 those kinds of situations to be like the fifth example that
17 you gave me, which was, you use a Motorola phone, it's got
18 Motorola on it -- I'm sorry, not phone but radio. You use
19 it and it's got a Motorola label on it.

20 A Correct, they are -- they are very similar, the
21 distinction being whether the user actually -- it is their
22 product, or if they are actually observing somebody use it,
23 or if it's not their product, but they have been given this
24 Motorola radio to operate in a time of need.

25 Q Okay. Any other ways in which that would happen

1 -- in which a potential customer would hear the 911 Hz
2 Tone?

3 A To the best of my knowledge, beyond -- and just
4 for clarification, on the trade shows, they are trade shows
5 that are open, or they are Motorola sponsored trade shows
6 where we go out and visit customers or groups of customers
7 to exhibit our products.

8 To the best of my knowledge, that I can recall, I
9 believe those are the -- those are the instances where a
10 customer would hear that 911 Hz Tone.

11 MR. STEWART: I would like to have marked as
12 Exhibit 12, Applicant's Response to Opposer's First Set of
13 Interrogatories to Applicant.

14 (Klein Deposition Exhibit

15 No. 12 was marked as
16 requested.)

17 A Okay.

18 BY MR. STEWART:

19 Q Have you seen this document before?

20 A I have seen this document before.

21 Q I would like you just to turn to page seven and
22 look at the response to Interrogatory Number 14 which goes
23 over onto page nine.

24 A Okay.

25 Q Did you assist in producing this list of trade

1 shows?

2 A No, I did not.

3 Q Do you see any listed here that are unfamiliar to
4 you?

5 A There are a few.

6 Q Which are they?

7 A I don't have a working knowledge of DistribuTECH
8 2005.

9 I would need -- I perhaps know the AFCEA West
10 item. I'm not sure of the acronym.

11 Major City Chiefs, that's fine.

12 TechAdvantage is fine.

13 NACO -- I have not. I'm not familiar with.

14 State and Provincial Conference, yes, I have
15 heard of.

16 National Postal Forum, I have not.

17 Navy League, Air Sea Space, I have not.

18 FOSE, I have not.

19 IWCE, I have.

20 NFBPA, I have not.

21 FDIC -- I have heard of the organization. I know
22 we have some interaction with them. I'm not too clear on
23 the contents or, I should say, the extent of.

24 To kind of highlight the ones that are most in my
25 mind, the APCO, the Fire Chiefs, the Rail System Suppliers,

1 the MDUG, IAFC, again, APCO.

2 Let's see, the IACP, ^{Printtrak} ~~Print Track~~ Users, the AUSA
3 annual MTG, Canadian APCO.

4 I'm not familiar with the HAPCOA organization.

5 ^{Printtrak} ~~Print Track~~ is fine; the Financial Analyst
6 Meeting; the Officers' Meeting the Shareholder Meeting and
7 the other APCO events

8 So I have working knowledge of the events that
9 are directly related to the customer bases that I interact
10 with.

11 Q Can you tell from the names of these -- let me
12 start over.

13 What is the nature of the customers with which
14 you interact?

15 A I interact with the -- again, as defined before
16 -- the public safety, fire, police, and aspects of the
17 federal government.

18 I interact with some utilities and some critical
19 infrastructure organizations, and the -- the people
20 associated with them.

21 I have had limited interaction with our
22 enterprise customers, as they normally focus on data driven
23 products and not voice.

24 Q Can you tell, based on the names of the trade
25 shows that you said you were not familiar with, whether

1 those fall into the category of enterprise customers?

2 A By the description of DistribuTECH,
3 TechAdvantage, some of those, I'm going to draw the
4 conclusion that they are -- they are enterprise based
5 customers.

6 MDUG is our Data Users Group which I have some
7 working familiarity with.

8 Some of these other items that are -- Navy, Army,
9 and some other elements such as those, I know that we do
10 have interactions with them from a federal -- federal
11 discussion and federal trade shows, but I have not worked
12 with those organizations.

13 The ones that define themselves as APCO or MTUG,
14 ~~Print Track~~ ^{Printrak}, and any of the Motorola specific meetings,
15 these are all ones that I have working familiarity with.

16 Q Now, at any of those trade shows, are you aware
17 of any instance in which Motorola featured the 911 Hz Tone
18 other than in connection with the operation of the function
19 that it signifies?

20 A I'm not aware of any other -- any other
21 presentation of that tone.

22 Q Now, are 911 Hz Tone products offered for sale
23 through other channels of trade such as retail or mail or
24 Internet?

25 A It is my understanding that to purchase a new

1 Motorola product, you have to go through our established --
2 either direct sales force or be an organization, a lessee of
3 products.

4 There are availability of used products in free
5 marketplace, eBay or whatever. I can't speak to those, as
6 those are either sold as used products by customers or
7 stolen or whatever. So I can't speak to any of that.

8 Q So Motorola itself does not sell through retail
9 stores -- mail or by Internet?

10 A Not -- by Internet, only if -- for specifically
11 the 911 Hz Tone products, the only Internet available
12 purchase is via the Motorola Internet web site where you
13 must be already authorized as a lessee or have an account
14 within Motorola to gain access.

15 MR. STEWART: We would like to gain access to that
16 site. I know we asked counsel for clarification of their
17 response in which you identified the Motorola principal web
18 site, but we have asked for a more specific page designator.

19 And it sounds as though we also need
20 authorization to view that page.

21 MR. WILLIAMS: We will take it under advisement.

22 MR. STEWART: Thanks.

23 BY MR. STEWART:

24 Q Has Motorola ever run focus groups regarding
25 reaction of customers to the 911 Hz Tone itself?

1 A I'm not aware of any focus group that was
2 specifically designated to see the response of a user to the
3 911 Hz Tone.

4 Q Does Motorola run focus groups in general with
5 respect to 911 Hz Tone products?

6 A Motorola does run focus groups -- you know, not
7 necessarily specific focus groups, but those types of
8 interactions with customers based for 911 Hz Tone products
9 and information about the products.

10 Q And are records kept of those focus groups?

11 A I can't stipulate for -- in general. It's my
12 understanding that when research has been completed, there
13 has been documentation associated with it. Whether it was
14 in the form of a trip report or -- you know -- actual
15 findings, some type of report has been generated.

16 Q How -- who has -- who is the custodian of those
17 kinds of documents?

18 A I don't know if there is a specific custodian to
19 those documents. Normally that type of effort ends up being
20 consolidated with a particular program's documentation.

21 Q So for the 911 Hz Tone products, would they be
22 within the product definition marketing organization?

23 A They could be. They could be involved with other
24 organizations also, perhaps the group that actually -- if it
25 was not the Marketing Group, the Product Definition Group,

1 if there was another group that sponsored the research, or
2 conducted the research and gave strictly feedback, verbal
3 feedback.

4 But they potentially have their own documentation
5 for the research that they have completed.

6 Q And is that research run out of the Product
7 Definition Marketing Organization?

8 A It can be requested by the Product Definition
9 Group, not necessarily run by -- there is leanings to who
10 ends up working through that. So it's not strictly to the
11 Product Definition Group.

12 Q Well, if not the Product Definition Group, would
13 it be run or communicated directly with the Marketing
14 Communications Organization?

15 A It could be them. I don't know a particular name
16 within that organization; or it could be within --
17 Engineering has an organization that completes research
18 tasks for the Products Definition Group.

19 Q Are there -- does Motorola create and distribute
20 other audio-visual promotional material regarding the 911 Hz
21 Tone products?

22 A Motorola develops visual presentation and
23 information concerning the products, I believe, on both
24 evidence Number 10, 11 -- there is a video that shows the
25 products' interaction with customers, and kind of highlights

1 and is an advertising method for the products themselves.

2 Q How is that advertising method disseminated?

3 A How is that advertising disseminated. To who --

4 Q To whom would that be shown?

5 A To whom would that particular video be shown?

6 Q Yes.

7 A That video comes with the training information.

8 That training information is available to sales force, given
9 to customers and what not.

10 There has been -- you know -- that particular
11 video, I believe, was on display at several trade shows in
12 the background.

13 There has been web seminars that, you know, the
14 introduction would be this type of informational video
15 information and highlights of the products, information like
16 that.

17 Q And which part of the organization produces that
18 kind of video?

19 A Traditionally it has been the Marketing
20 Communication Group. I say traditionally because they do
21 work in association with other organizations such that they
22 are aware of what focus we would like to highlight, what
23 part of a feature or product that we like to highlight.

24 Q Does Motorola use an outside agency to produce or
25 disseminate audio-visual promotional material about the 911

1 Hz products?

2 A I do not know.

3 MR. STEWART: We would request that all videos such
4 as the one we have been given this morning that relate to
5 the 911 Hz Tone products be produced to us.

6 MR. WILLIAMS: We will take that under advisement.

7 BY MR. STEWART:

8 Q You said that there -- videos like this could be
9 used in web seminars, is that right?

10 A Yes.

11 Q What does that mean?

12 A A web seminar is essentially a presentation of
13 information to customers via a web page that they could log
14 into via the Internet, because we have many customers across
15 many areas.

16 To help get the message out to them and be
17 communicative with our customers instead of expecting them
18 to travel to a particular location, we like to give them
19 opportunities where we can inform them about products and
20 updates and features, and we can do that in a very
21 simplistic, easy manner so they do not have to leave the
22 confines of their company or their particular location.

23 They don't have to spend the time to travel --
24 things like that. It's an ease of getting the message out
25 there in whatever ways.

1 Q Are you aware of any video promotional material
2 produced by Motorola with respect to 911 Hz Tone products
3 that has featured the 911 Hz Tone itself?

4 A I do not know. There are videos out there I'm
5 sure I have not seen. I cannot make a statement to the --
6 to the present that are not.

7 Q So you have not seen any video that features the
8 911 Hz Tone itself?

9 A I personally have not seen a video that featured
10 the 911 Hz Tone.

11 Q How much has Motorola spent on advertising the
12 911 Hz Tone products on an annual basis?

13 A The -- the focus of that type of advertisement to
14 advertise a 911 Hz Tone product, we have traditionally
15 focused on the customers, purchasing agents, elements such
16 as that. So it's come from these meetings, trade shows and
17 other customer interactions.

18 It's difficult to put a single monetary dollar
19 on it. I know that on average we spend approximately
20 \$100,000 alone in support of our MTUG and mutual user
21 groups, or users who use our products in public safety and
22 in critical infrastructure.

23 I know that for the Federal Government's type
24 entities, whether it's DOD, DOJ or other elements, it's
25 approximately \$160,000 on those types of materials and

1 presentations.

2 And this still doesn't include all the efforts of
3 the direct sales force and other groups. This is just
4 strictly in trade shows and, to the best of my knowledge,
5 trade shows and other material that are generated.

6 There is -- of the trade shows that I'm aware of
7 that focus on the APCO based elements, and the Fire Chiefs
8 and Police Chiefs, I know that those are -- those are, I
9 believe, over \$600,000 just on that grouping of those
10 particular trade shows.

11 And I cannot make any statement of, you know,
12 this lengthy list here of all the financial efforts to
13 support these.

14 Q So you've stated \$100,000 in support of mutual
15 user groups in the critical infrastructure --

16 A Approximately \$100,000 in support of MTUG,
17 Motorola Trunks User Group, and in Mutual, which is the
18 Motorola -- it's the -- I don't know the full acronym, but
19 it's the critical infrastructure, utilities and other
20 aspects.

21 Q And that is an annual budget?

22 A Yes.

23 Q Current annual budget?

24 A I believe so, it's 100, \$110,000, somewhere
25 thereabouts.

1 Q Has it been more or less?

2 A I'm not aware of any adjustment.

3 Q How far back are you aware of the budget?

4 A I've been -- it's my understanding that the
5 budget has been like that for the last few years. I can't
6 comment with specifics to that point or beyond in any
7 timeframe.

8 Q And \$160,000 in annual budget for -- what was the
9 next category?

10 A The Federal Government -- and that again is an
11 approximation. This is not my specific financial area.

12 But it is approximately \$160,000, and that is for
13 support of elements like the Navy League, like the Army,
14 stuff, any type of DOJ, Department of Justice, Department of
15 Defense, Department of Treasury, White House Communications
16 -- those organizations.

17 Q And \$600,000 for trade shows for APCO and related
18 public safety organizations?

19 A Correct.

20 Q And that's again an annual budget?

21 A That's an approximation of an annual budget for
22 the APCO groups.

23 Q And these numbers that you have given me are for
24 all promotional activities and staff support and travel
25 expenses, and so on, is that correct?

1 A Those are specific. It's my understanding --
2 again, I'm not the person who sets these up and pays the
3 finances for these events. It's my understanding that it
4 covers promotional material, it covers the booth space,
5 things like that.

6 I -- it certainly doesn't necessarily cover the
7 travel of people who attend, or necessarily the hotel rooms
8 and things like that, but it's focused on material used.

9 Q Okay. And who is the person who knows the
10 answers to those questions?

11 A Well, it would have to be somebody within Mary
12 ~~Botie's~~ ^{Bottie's} organization.

13 Q That's the Marketing Communications Organization?

14 A Yes, it is.

15 Q You said before that there is a separate
16 financial management organization within the business unit?

17 A I'm not familiar with the financials of how these
18 get paid, or the specific budgets associated with each one
19 of these.

20 That is part of the Marketing Communications
21 Organization. I don't have any visibility into that -- that
22 material.

23 Q Okay. Are there written guidelines governing use
24 of Motorola's trademarks?

25 MR. WILLIAMS: Objection. That calls for an

1 activity of the Legal Department. This witness is here as a
2 fact witness.

3 BY MR. STEWART:

4 Q Please answer.

5 A I personally have not read a document stipulating
6 the guidelines of that.

7 Q Have there been any instances of actual confusion
8 between the 911 Hz Tone and any other tone or trademark?

9 MR. WILLIAMS: Objection, that's vague, calls for a
10 legal conclusion.

11 BY MR. STEWART:

12 Q Please answer.

13 A Can you give me a little clarification of by
14 "confusion".

15 Q Has somebody ever, to your knowledge, or to
16 Motorola's knowledge, heard a tone and believed that that
17 was a Motorola product, or heard a Motorola tone and the
18 911 Hz Tone and thought it was a product belonging to
19 someone else?

20 A I don't know. Not in my experience. But that is
21 strictly my own experience.

22 Q Well, you are here speaking on behalf of
23 Motorola.

24 A I have not heard of such, nor have I seen such.

25 Q Did you seek to determine whether there were any

1 instances of actual confusion in preparing for this
2 deposition?

3 A Not specifically of confusion, no.

4 Q Then of what?

5 MR. WILLIAMS: Objection to the extent the question
6 calls for communication between the Legal Department and
7 yourself.

8 A I spent my energy identifying products, tone,
9 information I've already stipulated in questions.

10 BY MR. STEWART:

11 Q So you did not undertake any effort to determine
12 whether there had been instances of actual confusion between
13 the 911 Hz Tone and any other mark?

14 A At -- no, I did not.

15 Q What measures has Motorola taken to enforce its
16 rights in the 911 Hz Tone?

17 A At present, I am unaware of any products that
18 utilizes the 911 Hz tone. I'm unaware of efforts that
19 Motorola has done to protect the tone that we are using
20 beyond the fact that we are using it.

21 Q Do you -- have you during the course of the day
22 today remembered anything else? I offered you the
23 opportunity to come back and tell me if anything came to
24 mind later in the day.

25 A No, not that I'm aware of. No.

1 MR. STEWART: Okay. If we could go off the record
2 for a five-minute break, we will see if we are in a position
3 to wrap it up at this point.

4 THE VIDEOGRAPHER: This is the Videographer. The
5 time is now 3:26 p.m. We are going off the record.

6 (Whereupon, a short recess was
7 taken.)

8 THE VIDEOGRAPHER: This is the Videographer. The
9 time is now 3:44 p.m. We are back on the record.

10 MR. STEWART: Mr. Klein, thank you for your
11 testimony.

12 We have no further questions for you at this
13 time.

14 A All right.

15 MR. WILLIAMS: We have no questions.

16 MR. STEWART: Then the deposition is adjourned.

17 MR. WILLIAMS: We are going to reserve signature.

18 THE VIDEOGRAPHER: This marks the end of videotape
19 Number 3 and the conclusion of the deposition of David
20 Klein.

21 The time is now 3:45 p.m. We are off the record.

22 (Whereupon, at 3:45 p.m., the
23 signature of the witness having
24 been reserved, the witness being
25 present and consenting thereto,

the taking of the instant
deposition ceased.)

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

NEXTEL COMMUNICATIONS, INC.,)

Opposer,) Opp. No. 91/161,817

vs.) App. No. 78/235,618

MOTOROLA, INC.,) Pot. Mark: SENSORY MARK

Applicant:) (911 Hz tone)

I, DAVID ERIC KLEIN, state that I have
read the foregoing transcript of the testimony given
by me at my deposition on the 19th day of July 2005,
and that said transcript constitutes a true and
correct record of the testimony given by me at

1 said deposition except as I have so indicated on
2 the errata sheets provided herein.

3
4
5 _____
6 DAVID ERIC KLEIN

7 No corrections (Please initial) _____

8 Number of errata sheets submitted _____ (pgs)

9
10 SUBSCRIBED AND SWORN TO
11 before me this _____ day
12 of _____, 2005.

13
14 _____
15 NOTARY PUBLIC
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1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF C O O k)
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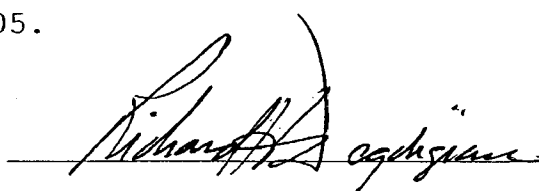
5 I, RICHARD H. DAGDIGIAN, Illinois CSR No.
6 084-000035, Registered Professional Reporter and Notary
7 Public in and for the County of Cook, State of Illinois, do
8 hereby certify that previous to the commencement of the
9 examination, said witness was duly sworn by me to testify
10 the truth; that the said deposition was taken at the time
11 and place aforesaid; that the testimony given by said
12 witness was reduced to writing by means of shorthand and
13 thereafter transcribed into typewritten form; and that the
14 foregoing is a true, correct, and complete transcript of my
15 shorthand notes so taken as aforesaid.

16 I further certify that there were present at the
17 taking of the said deposition the persons and parties as
18 indicated on the appearance page made a part of this
19 deposition.

20 I further certify that I am not counsel for nor in
21 any way related to any of the parties to this suite, nor am
22 I in any way interested in the outcome thereof.
23
24
25

1 I further certify that this certificate applies to
2 the original signed IN BLUE and certified transcripts only.
3 I assume no responsibility for the accuracy of any
4 reproduced copies not made under my control or direction.
5

6 IN TESTIMONY WHEREOF, I have hereunto set
7 my hand and affixed my notarial seal this 20th day of
8 July, 2005.
9

10 
11 Richard H. Dagdigian, CSR, RMR, CRR

12
13 My Commission expires
14 May 1, 2007.
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ERRATA

Deposition of: David Eric Klein

I wish to make the following changes for the following reasons:

<u>C55</u>	Page	Line	Change:	Reason:
✓ 5		11	TVMP – TBMP	Spelling Error
✓ 36		6	Leshim – Leshin	
✓ 17		8	Leshim – Leshin	
✓ 54		17	Leshim – Leshin	
✓ 18		15	Leshim – Leshin	
✓ 58		6	Leshim – Leshin	
✓ 18		23	Leshim – Leshin	Spelling Error
✓ 49		23	Talk-Permits – Talk-Permit	Spelling Error
✓ 53		8	delete “it was not”	Clarification
✓ 56		9-10	Pitman – Pittman	
✓ 21		14	Pitman - Pittman	
✓ 57		5-6	Pitman – Pittman	
✓ 21		25	Pitman – Pittman	
✓ 57		15	Pitman – Pittman	

✓ ₂₃	19	Change:	Pitman – Pittman
		Reason:	Spelling Error
✓ ₂₈	11	Change:	Mike – Microphone
✓ ₄₂	25	Change:	Mike – Microphone
✓ ₉₂	18	Change:	Mike – Microphone
		Reason:	Abbreviation correction
✓ ₄₀	18	Change:	Jim Sarallo
		Reason:	Spelling Error
✓ ₄₀	24	Change:	Mary Bottie
✓ ₁₃₂	11-12	Change:	Mary Bottie
		Reason:	Spelling Error
✓ ₄₁	4-5	Change:	Craig Chenicek
		Reason:	Spelling Error
✓ ₄₁	8-9	Change:	Kurt Brasch
✓ ₇₈	25	Change:	Kurt Brasch
		Reason:	Spelling Error
✓ ₅₉	12	Change:	Even – Event
		Reason:	Correction
✓ ₅₉	24	Change:	Aaron – Error in
✓ ₅₈	23	Change:	esthetic – aesthetic
✓ ₆₀	8	Change:	esthetic – aesthetic
		Reason:	Spelling Error
✓ ₆₃	23	Change:	150 point-whatever Hz.

✓ 90	11	Reason:	Correction
		Change:	leasers - lessors
✓ 116	4	Change:	leasers - lessors
		Reason:	Correction
✓ 118	1	Change:	Yes
✓ 118	3	Change:	Yes
		Reason:	Clarification
✓ 122	2	Change:	Printrak
✓ 122	5	Change:	Printrak
✓ 123	14	Change:	Printrak
		Reason:	Spelling Error

Signed: 

Dated: Aug 29 2005